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IN THE

Supreme Court of the United States

No. _____

LAWRENCE A. RIDGEWAY, PETITIONER

V.

STATE OF OHIO, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of Ohio entered in the above entitled case on June 29, 1972.

OPINIONS BELOW

The Supreme Court of Ohio rendered no opinion.

The opinions of the Montgomery County, Ohio Court of Appeals are unreported and attached to appendix.

JUDGMENTS BELOW

The date of the judgment of the Supreme Court of Ohio was June 9, 1972. The date of the final judgment denying petitioner motion for rehearing was June 29, 1972.

JURISDICTION

The affirming of petitioner's conviction by the Supreme Court of Ohio and the denial of his motion for reconsideration is a determination by the highest state court

in which a decision could be had. The jurisdiction of this Court is invoked under 28 U.S.C., section 1257(3), petitioner claiming rights under the Fourteenth Amendment to the Constitution of the United States.

STATEMENT OF CASE

On June 25, 1969, the petitioner was indicted for one count of larceny by the Grand Jury of Montgomery County, Ohio. On August 25, 1969, a jury trial was commenced and on August 29, 1969, the jury found the defendant guilty of grand larceny. On September 5, 1969, judgment of conviction was entered against petitioner.

During the course of the trial, petitioner acted as his own counsel. At all times during the trial, one or two court reporters was present and was ostensibly making a stenographic record of the proceeding. Following his conviction, petitioner obtained counsel to prosecute his appeal. On September 29, 1969, after properly perfecting petitioner's appeal, counsel requested a full and complete transcript of the trial. This request was denied by the Court for the reason that petitioner failed to prepay the printing cost. Three days thereafter, October 2, 1969, petitioner filed a motion to proceed in forma pauperis, but the trial court refused to grant a hearing on the motion. This ruling was appealed by petitioner and seven months later, on June 5, 1970, the Court of Appeals reversed the Trial Court and remanded the case. Subsequently, the Trial Court allowed the printing of the transcript upon the basis that petitioner was indigent, but this was only after numerous continuances upon the Court's own motions.

On October 28, 1970, the Trial Court by journal entry stated that one of the Court reporters who had made

stenographic notes of a portion of the proceedings could not be located.

Eventually the Court ordered the incomplete transcript filed. Petitioner, following the provisions of Ohio Revised Code, Section 2321.06, filed an objection to the incomplete transcript, which objection was overruled by the Trial Court. The Trial Court acknowledged that a narrative transcript could not be prepared due to the fact that appeal counsel was not at the trial.

Except for conflicting statements between the Court and the reporter, it is unknown how much of the trial was missing from the transcript, but unquestionally portions of testimony were missing, together with arguments of counsel.

The verdict of guilty against petitioner clearly failed to follow the provisions of an Ohio Statute requiring a jury to find the value of property stolen and to recite the finding in the verdict.

From the judgment of conviction and sentence to the Ohio Penitentiary, petitioner appealed and the Court of Appeals and the Ohio Supreme Court affirmed the conviction. Petitioner has been free on bond pending his appeal. On June 29, 1972, the Supreme Court of Ohio overruled petitioner's motion for rehearing.

QUESTIONS PRESENTED

(1) Whether there has been a denial of due process and equal protection of the law within the meaning of the Fourteenth Amendment to the United States Constitution, where in a criminal case the state fails to furnish an indigent defendant a complete and full transcript of trial proceedings for an appeal after conviction for a felony?

(2) Whether the failure of the trial court to follow a state statute requiring the jury to find the value of property allegedly stolen deprived petitioner his liberty without due process of law under the Fourteenth Amendment to the United States Constitution?

ARGUMENT

(1) CERTIORARI SHOULD BE GRANTED BECAUSE THE DECISION OF THE OHIO SUPREME COURT DENIES AN INDIGENT PETITIONER A FULL AND EFFECTIVE RIGHT OF APPEAL, WHERE THE STATE OF OHIO HAS CREATED SUCH RIGHT BY LAW.

The State of Ohio by appropriate legislation has set up a system of appellate review which of necessity requires a complete bill of exceptions in appeals upon questions of law and provides for the preservation of a complete transcript of trial proceedings for appellate review. Ohio Revised Code, Section 2953.03. Following the rules of appellate procedure, the courts of appeals by strict rule absolutely refuse to consider any fact or error of law not printed in the trial transcript or other parts of the printed record. Ohio Revised Code, Sections 2953.02-04-05 and .08; *Munz v. Spofa, 77 Ohio L. Abs. 289 (1953),* affirmed by the *Ohio Supreme Court in 160 Ohio St. 405 (1953); DeMoss v. Conart Motor Sales, Inc. 149 Oh. St. 299, 78 N.E. (2) 675 (1948); State, ex. rel. Schneider v. Blythin, Judge, 157 Ohio St. 66 (1952); State, ex. rel. Novak v. Bright, 165 Ohio St. 363 (1956); Beach v. Sweeney, 167 Ohio St. 477 (1958); Knowlson v. Bellman, 160 Ohio St. 359, (1953), 116 N.E. (2d) 208.*

While the statutes of Ohio require prepayment of costs before furnishing a printed transcript to a defendant who wishes to appeal, it is well established by the

Ohio Supreme Court and the United States Supreme Court that the Due Process Clause of the Fourteenth Amendment to the United States Constitution requires that an indigent defendant be furnished a complete printed copy of the trial transcript without prepayment of costs. *State v. Frato, 168 Ohio St. 281 (1958); Griffin v. Illinois, 351 U.S. 12, 100 L. Ed. 891, 76 S. Ct. 585 (1956); Drapes v. Washington, 372 U.S. 487, 9 L.Ed. (2d) 899, 83 S. Ct. 774 (1963); Eskridge v. Washington, 357 U.S. 214, 1 L.Ed. (2d) 1269, 78 S. Ct. 1061 (1958); Burns v. Ohio, 360 U.S. 262 (1959); Smith v. Bennett, 365 U.S. 708, 6 L.Ed. (2d) 39, 81 S. Ct. 895; Lane v. Brown, 372 U.S. 477, 9 L.Ed. (2d) 892, 83 S. Ct. 768; Williams v. City of Oklahoma City, 395 U.S. 458.*

The specific question petitioner respectfully submits to the Supreme Court is whether the requirements of due process are met when an indigent defendant who has been convicted of a felony, after a trial by jury, in which defendant chose to represent himself, and subsequent to said conviction, he employs an attorney to make his appeal, but is unable to obtain a complete transcript of the trial proceedings through no fault of his own? While there is a serious dispute as to the extent of that which is missing from the transcript, there is no dispute that said transcript is incomplete due to the disappearance of one of the court stenographers after several months delay by the court in ordering the printing of same, due to petitioner's inability to prepay the costs. The trial court by entry acknowledged that it would not be possible to prepare a narrative bill of exceptions as to the missing portions of the transcript for the reason that petitioner was without counsel during the trial. The transcript as filed does bear out that certain testimony has been omitted, together with objections and the rulings of

the court. Also, opening statements and closing arguments do not appear in the transcript. Respondent has asserted during the various stages of appeal that since the incomplete transcript standing alone supports a conviction, no prejudice exists to defendant. Members of the bar and bench experienced in the trial and appeal of criminal cases could never accept such a proposition for they are well aware that in the shortest moment of time an utterance can be made which would require the declaration of a mistrial or create some error prejudicial to defendant which would cause a conviction to be set aside. Most all members of the law profession are equally aware of the importance of recording opening and closing comments of counsel.

That much of the record which was made available to petitioner indicates the reason for the missing parts of the transcript. Because of the unusually long delay in ordering the transcript of proceedings, one of the court reporters disappeared. This delay was caused solely by an erroneous ruling of the Court in refusing to consider petitioner's application to proceed in forma pauperis, which in and of itself was a denial of defendant's constitutional rights, as was determined by the Court of Appeals of Montgomery County, Ohio in reversing the trial court's order refusing petitioner the printed transcript at the time of filing his original notice of appeal. The initial postponements of the printing of the transcript which extended over a period of several months were ordered by the court, and caused by the court, as a convenience to the court reporter and due to petitioner's inability to prepay the costs and not by acts of petitioner.

This case illustrates one of the many inequities that exist between the affluent and the poor within our present system of criminal justice. It further demonstrates the dangers in a system of slow appellate review.

Had petitioner been able to deposit the advance printing costs at the time of filing his notice of appeal, the court would have been compelled to furnish him with a full and complete transcript. Such classification based upon indigency is patently unreasonable and not equal protection as contemplated by the Fourteenth Amendment. The rules of appellate procedure having been established by the State of Ohio, the state is bound to apply it equally to all litigants.

While counsel is aware that petitioner's argument in effect urges the Court to extend the doctrine enunciated in *Griffin v. U.S.* and the line of cases following it, it is submitted that such an extension is reasonable and necessary in the State of Ohio, since without the requirement of a complete transcript for an indigent, there is no effective appeal.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION, AMENDMENT XIV

Section 1 — "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

OHIO REVISED CODE, SECTION 2301.20

Court may order full report of testimony — "Upon the trial of a case in the court of common pleas, if either

party to the suit, or his attorney, requests the services of a shorthand reporter, the trial judge shall grant the request, or such judge may order a full report of the testimony or other proceedings, in which case such shorthand reporter shall take accurate shorthand notes of the oral testimony or other oral proceedings, which notes shall be filed in the office of the official shorthand reporter and carefully preserved."

OHIO REVISED CODE, SECTION 2301.23

Transcripts of testimony furnished party if requested — "When shorthand notes have been taken in a case as provided in section 2301.20 of the Revised Code, if the court, either party to the suit, or his attorney requests transcripts of any portion of such notes in longhand, the shorthand reporter reporting the case shall make full and accurate transcripts thereof for the use of such court or party. The court may direct the official shorthand reporter to furnish to the court and parties copies of decisions rendered and charges delivered by the court in pending cases.

OHIO REVISED CODE, SECTION 2321.06

Duty of clerk — "On the filing of a bill of exceptions as required by section 2321.05 of the Revised Code, the clerk of the court forthwith shall notify the adverse party, or his attorney, of its filing. Within ten days after such notice, any adverse party may file in the cause any objection or amendment he proposes to such bill, for its correction. On the expiration of the time fixed for the filing of objection or amendment by the adverse party, or within five days thereafter, or immediately on the filing of the bill if the consent of the adverse party to such transmission is indorsed thereon,

the clerk shall transmit it, together with all objections and amendments, filed thereto, to the trial judge."

OHIO REVISED CODE, SECTION 2907.20

Larceny — "No person shall steal anything of value.

"Whoever violates this section is guilty of larceny, and, if the value of the thing stolen is sixty dollars or more, shall be imprisoned not less than one nor more than seven years. If the value is less than sixty dollars, such person shall be fined not more than three hundred dollars or imprisoned not more than ninety days, or both."

OHIO REVISED CODE, SECTION 2945.75

Jury to set value in verdict — "When an indictment or information charges an offense against property by larceny, receiving stolen property, embezzlement, wrongful conversion of property, or obtaining property by false pretenses, if the value thereof determines the degree of the offense or the punishment, the jury on conviction shall ascertain and declare in their verdict the value of such property."

OHIO REVISED CODE, SECTION 2953.02

Review of judgments. — "In a criminal case, including a conviction for the violation of an ordinance of a municipal corporation, the judgment or final order of a court of record inferior to the court of appeals may be reviewed in the court of appeals. A final order of an administrative officer or agency may be reviewed in the court of common pleas. A judgment or final order of the court of appeals involving a question arising under the Constitution of the United States or of this state may be appealed to the supreme court as a matter of

right. Such right of appeal shall extend to cases in which the death penalty has been affirmed, felony cases in which the supreme court has directed the court of appeals to certify its record, and in all other criminal cases of public or general interest wherein the supreme court has granted a motion to certify the record of the court of appeals. The supreme court in criminal cases shall not be required to determine as to the weight of of the evidence."

OHIO REVISED CODE, SECTION 2953.03

Transcript to be furnished; [indigent defendants] — "On application by or on behalf of a defendant, after judgment or after the date upon which imposition of sentence is suspended, as provided by sections 2951.02 and 2951.10 of the Revised Code, to the clerk of court or his deputy or one charged by law to keep the public records or docket entries in criminal cases, as provided in section 2953.02 of the Revised Code, and upon tender of the proper fee, such officer shall make and cause to be delivered to the clerk of the reviewing court to which the appeal is taken within five days of the date of the application, a complete certified transcript of the record and docket entries and entries on the journal together with the original papers in the case. If the prosecution was before a court or magistrate in which a complete record is not made, such officer shall within five days of such request, so make and deliver a certified transcript of the judgment and all entries in the case, and shall forward the same to the clerk of the court in which review is sought, together with the original papers in the case. It is not necessary to include with such transcript the bill of exceptions unless requested by the defendant, in which case the fee paid shall in-

clude the cost of transcribing such bill as provided by section 2301.24 of the Revised Code.

The judge of the trial court in a felony case may because of the poverty of the defendant, in the interest of justice, order the bill of exceptions and transcript, or either, paid from the county treasury in the manner provided in section 2301.24 of the Revised Code, and order the amount in money so paid charged as costs in the case. In cases where the court grants a motion to prepare a bill of exceptions for the defendant at the expense of the state, as provided in this section, and there is not sufficient time to file it, as provided by section 2945.65 of the Revised Code, the court shall extend such time, not exceeding thirty days from granting such motion."

OHIO REVISED CODE, SECTION 2953.04

Proceedings to review — "Judgments and final orders are reviewed by appeal, instituted by filing notice of appeal with the court rendering such judgment or order and with filing a copy thereof in the appellate court where leave to appeal must be obtained. Upon filing the notice of appeal there shall be filed in the appellate court the transcript and original papers as provided in section 2953.03 of the Revised Code. It is not necessary to include in the transcript of the record any bill of exceptions or objections, but the original bill of exceptions or objections, but the original bill of exceptions or objections, may be attached in lieu of the transcript of the record thereof. The court in which the review is sought, by summary process, may compel a more complete record to be furnished, and such original papers to be forwarded. The brief of the appellant shall be filed with the transcript and shall contain the assign-

ments of error relied on in such appeal. Within fifteen days thereafter, the appellee shall file its brief. All of such proceedings to review such judgments have precedence over all other cases in said reviewing court, and shall stand for hearing on the trial docket of said court from day to day until heard and submitted. Special statutes regulating appeals in particular cases are not affected by this section."

OHIO REVISED CODE, SECTION 2953.05

Appeals — "Appeal under section 2953.04 of the Revised Code, may be filed as a matter of right within thirty days after judgment and sentence or from an order overruling a motion for a new trial or an order placing the defendant on probation and suspending the imposition of sentence in felony cases, whichever is the latter. Appeals from judgments or final orders as above defined in magistrate courts shall be taken within ten days of such judgment or final order. After the expiration of the thirty day period or ten day period as above provided, such appeal may be taken only by leave of the court to which the appeal is taken. An appeal may be taken to the supreme court by giving notice as provided by law and rule of such court within thirty days from the journalization of a judgment or final order of the court of appeals in all cases as provided by law."

OHIO REVISED CODE, SECTION 2953.08

Appeal filed in supreme court. — "An appeal shall not be filed in the supreme court except upon good cause shown, upon motion and notice to the prosecuting attorney and the attorney general, as in civil cases, or unless such motion is allowed by the supreme court, or, in capital cases by two judges thereof, or in other cases

by one judge thereof. In cases involving questions arising under the constitution of the United States, or of this state, such leave is not necessary."

II. CERTIORARI SHOULD BE GRANTED BY VIRTUE OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, WHERE A TRIAL COURT FAILS TO FOLLOW A MANDATORY STATE STATUTE REQUIRING THE JURY, IN A CRIMINAL PROSECUTION FOR LARCENY, TO FIND THE VALUE OF THE PROPERTY STOLEN FOR THE PURPOSE OF DETERMINING WHETHER A DEFENDANT IS GUILTY OF A FELONY, A MISDEMEANOR, OR NO CRIME AT ALL.

At the conclusion of the petitioner's trial before a jury, during which he acted as his own counsel, the jury retired, and after deliberating, returned a verdict declaring the defendant "guilty of grand larceny."

Ohio is a state wherein all crimes are statutory. Petitioner was charged under the Ohio larceny statute, Section 2907.20, which fixes the punishment for larceny upon the basis of the value of the property stolen.

Ohio Revised Code, Section 2945.75 sets forth the following requirements with respect to a jury verdict upon the crime of larceny and other related crimes wherein the value of the property determines the nature of the offense.

> "the jury on conviction *shall* ascertain and declare in their verdict the value of such property."

Notwithstanding the failure in this instance of the jury to find the value of the property, as required by the Ohio statute, the court sentenced petitioner as a

felon, the effect of this action was to substitute a finding by the court of a critical fact which was reserved by the state legislature for the jury.

It is basic to the rights of a defendant in a criminal case that once the state undertakes to deprive an individual of life or liberty it must conform to the rules of procedure which it has itself established. *State v. Cocco, 73 Ohio App. 183. (1943)* the requirement that the state conform to its own procedure rules is a generally recognized constitutional protection under the due process clause of the Fourteenth Amendment to the United States Constitution. *Minden v. Georgia, 183 U.S. 559, 22 S. Ct. 224.*

In this case, the jury failed to find the value of the property, contrary to the mandatory requirement of Ohio statute. The statutory requirement which was ignored is clear and could not have been subjected to misinterpretation. In Ohio, as in all other states, an unambiguous statute is to be applied, not interpreted. *Allen v. Tressenrider, 72 OS 77, 73 NE 1015: Sears v. Weimer, 143 OS 312, 28 O. Ops 270, 55 NE 2d 413, Hull v. State (App.) 20 OL Abs 635.* It is also a universal proposition of law that penal statutes must be strictly construed in favor of a defendant.

The irony of the instant case is that the Montgomery County Court of Appeals recognized the failure of the verdict to comply with the requirements of state statute in the following language:

> "The verdict in this form is technically incorrect, and its use is not approved."

The appellate court then reasoned that since the petitioner did not affirmatively show that he was "in any-

wise prejudiced by this irregularity," his conviction and sentence under the felony provision should, and was, affirmed.

Thus, the trial court was permitted to substitute its judgment for the judgment of a jury in a criminal case, in violation of state statute and in obvious violation of petitioner's right to due process under the Fourteenth Amendment to the United States Constitution. Such action is tantamount to a trial judge making a finding of guilty in a criminal case if the jury cannot arrive at a verdict. It is offensive to the very basis of our system of criminal justice, and the issue thus raised is far more important than any single case or the vast majority of questions which the United States Supreme Court has been requested to consider in the past.

This Court has consistently held that where a criminal statute is unreasonably vague, a conviction under it will not be sustained. *Winters v. New York, 333 US 507, 68 S Ct 665.* It would seem equally important that where a criminal statute is mandatory and unambiguous, it may not be applied in a vague or selective manner to secure the conviction of an accused.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

WILLIAM J. ABRAHAM
ROBERT E. CESNER, JR.
24 North High Street
Columbus, Ohio 43215
Counsel For Petitioner

CERTIFICATE

The undersigned hereby certifies that he is duly admitted to practice before this Court and that he has personally served a copy of the petition for writ of certiorari upon Lee Falke, Prosecuting Attorney, Montgomery County, Ohio, counsel for Respondent, by mailing the same to him by first class U.S. mail at his address in the Criminal Courts Building, Dayton, Ohio, which is a distance of seventy miles from Columbus, Ohio.

WILLIAM J. ABRAHAM
Counsel for Petitioner

Appendix No. 1

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

Case No. 3507

STATE OF OHIO
PLAINTIFF-APPELLEE
—VS—
LAWRENCE W. RIDGEWAY,
DEFENDANT-APPELLANT

ENTRY

This cause came on to be heard upon an appeal from an order of The Common Pleas Court of Montgomery County, entered on the 8th day of October, 1969, wherein the Court held that it had no jurisdiction to consider and grant a motion of defendant in a criminal case to permit him to proceed as an indigent due to the fact that he is unable to prepay the costs for preparing a bill of exceptions after the defendant had filed his notice of appeal to the Court of Appeals.

Upon consideration of Appellant's assignment of error, brief and argument of Counsel, it is the opinion of the Court that the order of the Common Pleas Court should be reversed.

It is therefore, hereby ordered that the judgment of the Montgomery County Common Pleas Court be reversed and this matter remanded for further proceedings in accordance with law.

Kerns, P. J.
Crawford, J.
Sherer, J.

APPROVED:
William J. Abraham
Attorney for Defendant-Appellant
Lee C. Falke, Prosecuting Attorney
James A. Brogan, Assistant
Attorneys for Plaintiff-Appellee

Appendix No. 2

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO.

Case No. 3507

STATE OF OHIO,
Plaintiff-Appellee
vs.
LAWRENCE A. RIDGEWAY,
Defendant-Appellant

OPINION

Rendered on the 24th day of February, 1972.

LEE C. FALKE, Prosecuting Attorney, 41 North Perry Street, Dayton, Ohio 45402, by: James A. Brogan, Assistant Prosecuting Attorney and Kathryn G. Havermann, Legal Assistant
Attorneys for Plaintiff-Appellee

WILLIAM J. ABRAHAM and ROBERT E. CESNER, JR., 16 East Broad Street, Columbus, Ohio 43215
Attorneys for Defendant-Appellant

CRAWFORD, J.:

Defendant was convicted and sentenced on September 5, 1969 upon an indictment which, as amended, charged that he "did steal from Dixie Enterprises, Incorporated property, (2) Turbo Power Lawn Mowers and (2) MTD 4 horse power Rotary Tillers, in an amount and value in excess of Sixty Dollars ($60.00); etc."

According to the State's evidence, defendant had contrived with a stockboy and a cashier of Goldman's

Store No. 7 in Huber Heights, to obtain, without paying or being charged therefor, certain merchandise, including that described in the indictment, which he hauled away in a truck and kept or concealed.

Although not indigent, he chose to represent himself at the trial. Counsel employed by him now prosecute this appeal.

His first assignment of error is that "Where a jury returns a verdict of 'guilty of grand larceny' and no value of the property stolen is declared, such verdict will not form the predicate for a judgment."

The verdict reads:

> "We, the Jury, upon the issues joined in this case, do find the defendant, Lawrence A. Ridgeway, guilty of grand larceny."

This verdict is partly typed upon a printed form, with a blank space in which the word "guilty" is written by the jury in pen and ink.

Sec. 2945.75 R.C. provides that in the trial of a charge of larceny, if the value of the property stolen determines the degree of the offense or the punishment, the jury, on conviction, shall ascertain and declare in their verdict the value of such property.

Although the term "Grand Larceny" is not found in the statutes, the court in his charge defined the term as generally understood, explaining that it means the larceny of property of such value as to constitute a felony, which in this state is in excess of $60.00. The evidence clearly shows the value of the property stolen in this case to have exceeded that amount.

No objection was made either to the form of the verdict or to the instructions of the court.

The verdict in this form is technically incorrect, and

its use is not approved. However, the defendant-appellant has not shown that he was in anywise prejudiced by this irregularity. His complaint is effectively answered by the Supreme Court in the case of *State vs. Park*, 174 Ohio St. 81, 186 N.E. (2d) 736 (1962).

The only perceptible distinction between that case and the present is of no significance: There the defendant's counsel admitted that the property allegedly stolen was of the value of Three Hundred Dollars ($300.00); here, although there is no such admission, the evidence is quite clear that the value was substantially in excess of Sixty Dollars ($60.00).

This assignment discloses no prejudicial error.

The second assignment is that the transcript or bill of exceptions is incomplete. Present counsel filed objections to the bill of exceptions as presented to the court, on the basis that it was incomplete for lack of a certain portion of the trial, during which a special temporary reporter was taking the record. In making the objection, defendant's counsel stated:

> "The likelihood (sic) of a prejudice to defendant's right of review on appeal is particularly clear in this case where, defendant represented himself during the trial and counsel has no means of determining what transpired during that portion of the trial which does not appear in the bill of exceptions. The defendant and his counsel in this case has done everything required by law to obtain a complete bill of exceptions, and defendant should not suffer detriment because of the failure of the court reporter to provide a portion of the transcript."

The objections were overruled in an entry which recited that a portion of the testimony was taken on a single day after 4:00 o'clock P.M. by a special reporter,

who, through illness, etc. has since been unavailable.

The entry also stated: "In view of the self representation no efforts have been made to supply a narrative report of the missing testimony.

"The trial court has no alternative other than to deliver the record as it exists with all of the testimony except that portion taken after 4:00 P.M. on the single day in question."

We agree that the trial court could not properly have taken any other course.

The burden of preparing such record as will portray his claimed errors is always upon the appellant. A narrative bill of exceptions when necessary to this end is permissible. 3 Ohio Juris. (2d) 344, Appellate Review, Section 432. There is no reason why such a method could not be used to supplement this transcript or bill of exceptions. It is no excuse that defendant was without counsel. This was by his own choice. He did not claim to be indigent nor request the appointment of counsel. If he cannot recall the substance of what was omitted, its importance to his defense would appear to be questionable, and he is not in a position to claim prejudice by its omission.

A trial in which one side proceeds without counsel always presents great difficulties to the court and to opposing counsel. In this case the trial court exhibited commendable patience, and he and opposing counsel showed all proper consideration for defendant's rights in an exhaustive trial which generated a record which already runs to 556 pages.

The third assignment is that the verdict is contrary to the manifest weight of the evidence. Although it is desirable that there be a complete transcript or bill of exceptions for the consideration of such an assignment,

the nature of the argument here presented is such as to reduce the importance of an absolutely complete record. The evidence presented leaves no doubt that defendant did wrongfully steal and carry away the property alleged in the indictment.

The argument under this assignment is that inasmuch as he operated with the connivance of persons in the employ of the Goldman store, from which the property was taken, he should be charged only, if at all, with being an aider and abettor to an embezzler or embezzlers.

The fact that he might conceivably be so charged does not relieve him of guilt of grand larceny. The larceny was shown to have been committed by him, regardless of the culpable conduct of others.

No error prejudicial to the defendant appearing in the record, the judgment will be affirmed.

SHERER, P. J. and KERNS, J. concur.

Appendix No. 3

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO,
City of Columbus.
State of Ohio,
Appellee,
vs.
Lawrence A. Ridgeway,
Appellant.

1972 TERM
To wit: June 9, 1972

No. 72-306

MOTION FOR LEAVE TO APPEAL FROM THE COURT OF APPEALS

for MONTGOMERY *County*

It is ordered by the Court that this motion is overruled.

COSTS:

Motion Fee, $20.00, paid by William J. Abraham.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this_____day of_____19____
_____Clerk
_____Deputy

Appendix No. 4

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO,
City of Columbus.
State of Ohio,
Appellee,
vs.
Lawrence A. Ridgeway,
Appellant.

1972 TERM
To wit: June 29, 1972

No. 72-306

REHEARING

It is ordered by the court that rehearing in this case is denied.

I, THOMAS L. STARTZMAN, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry was correctly copied from the records of said Court, to wit, from Journal No._____Page_____

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Supreme Court this 29th day of June, 1972.

THOMAS L. STARTZMAN, *Clerk.*
*By*_____*Deputy.*

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. _____

LAWRENCE A. RIDGEWAY, PETITIONER

v.

STATE OF OHIO, RESPONDENT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

Respondent respectfully prays that a writ of certiorari not issue to review the judgment of the Supreme Court of Ohio entered in the above captioned matter on June 29, 1972.

OPINIONS BELOW

The Supreme Court of Ohio rendered no opinion.

The opinions of the Court of Appeals, Second Judicial District, Montgomery County, Ohio, are unreported and are appended hereto.

JUDGEMENTS BELOW

On June 9, 1972, the Supreme Court of the State of Ohio overruled Petitioner's Motion For Leave To Appeal From The Court of Appeals, Second Judicial District, Montgomery County, Ohio.

On June 29, 1972, Petitioner's Motion to the Supreme Court of Ohio for rehearing was denied.

JURISDICTION

The Petitioner invokes the jurisdiction of this Court under Title 28 U.S.C.A., Section 1257 (3) alleging violation of certain rights secured by the Fourteenth Amendment to the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION, AMENDMENT XIV, Section 1: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

OHIO REVISED CODE, SECTION 2321.07
DUTY OF TRIAL JUDGE
The trial judge, upon the receipt of a bill of exceptions, shall indorse thereon the date it was received, and within five days thereafter correct it, if necessary, allow and sign such bill, and immediately transmit it to the office of the clerk of the court from whom it was received, with any amendment or objections thereto.

OHIO REVISED CODE, SECTION 2945.75
JURY TO SET VALUE IN VERDICT
When an indictment or information charges an offense against property by larceny, receiving stolen property, embezzlement, wrongful conversion of property, or ob-

taining property by false pretenses, if the value thereof determines the degree of the offense or the punishment, the jury on conviction shall ascertain and declare in their verdict the value of such property.

QUESTIONS PRESENTED

(1) Whether there has been a denial of due process and equal protection of the law within the meaning of the Fourteenth Amendment to the United States Constitution, where in a criminal prosecution for Grand Larceny and due to circumstances beyond the control of the Trial Court, the Petitioner is furnished with an incomplete transcript of the trial proceedings?

(2) Whether the Petitioner has been deprived of his liberty without due process of law within the meaning of the Fourteenth Amendment to the United States Constitution where in a criminal prosecution under an indictment for Grand Larceny the jury returns a verdict of guilty without assigning an exact monetary value to the stolen property?

STATEMENT OF THE CASE

On June 25, 1969, the petitioner was indicted for one count of Grand Larceny by the Grand Jury of Montgomery County, Ohio. On August 25, 1969, a jury trial was commenced and on August 29, 1969, the jury found the defendant guilty of Grand Larceny. On September 5, 1969, judgment of conviction was entered against petitioner. During the course of the trial, petitioner acted as his own counsel.

Following his conviction, petitioner obtained counsel to prosecute his appeal. On September 29, 1969, after properly perfecting petitioner's appeal, counsel requested a full and complete transcript of the trial. This request was denied by the Court for the reason that petitioner failed to prepay the printing cost. Three days there-

after, October 2, 1969, petitioner filed a motion to proceed in forma pauperis, but the trial court refused to grant a hearing on the motion. This ruling was appealed by petitioner and on June 5, 1970, the Court of Appeals reversed the Trial Court and remanded the case. Subsequently, the Trial Court allowed the printing of the transcript upon the basis that petitioner was indigent.

On October 28, 1970, the Trial Court by journal entry stated that one of the Court reporters who had made stenographic notes of a portion of the proceedings could not be located.

The Court subsequently ordered the incomplete transcript filed. Petitioner filed an objection to the incomplete transcript, which objection was overruled by the Trial Court. The Trial Court acknowledged that a narrative transcript could not be prepared due to the fact that appeal counsel was not at the tirial.

From the judgment of conviction and sentence to the Ohio Penitentiary, petitioner appealed and the Court of Appeals and the Ohio Supreme Court affirmed the conviction. Petitioner has been free on bond pending his appeal. On June 29, 1972, the Supreme Court of Ohio overruled petitioner's motion for rehearing.

ARGUMENT I

AN INCOMPLETE BILL OF EXCEPTIONS, EVEN THOUGH OBJECTED TO BY THE PETITIONER, DID NOT DENY HIM HIS RIGHT TO A FULL AND EFFECTIVE APPEAL UNDER THE LAWS OF THE STATE OF OHIO.

It is mandatory that the Trial Judge correct errors in the Bill of Exceptions. *Revised Code § 2321.07; State ex rel. Eges vs. Corlett, 137 Ohio St. 19, 27 N. E. (2d) 930 (1940).* The missing portion of testimony in this case consisted of approximately one hour of cross-examination by Mr. Ridgeway of Detective Larry J. Ballard, formerly

of the Wayne-Township Police Department in Montgomery County, Ohio. The Lower Court has done everything within its power to assemble this testimony which was recorded by a relief stenographer. All efforts to locate the reporter, or her notes, were in vain. There was no attempt to reconstruct a narrative report of the absent testimony, apparently, because the Defendant chose to defend himself. In view of this and of the fact that this dialogue was but a small and seemingly insignificant facet of the nearly six hundred pages of recorded testimony, the Trial Court had no other alternative but to deliver the transcript as it existed, minus that segment taken after 4:00 p. m. on the day in question.

Petitioner has made no allegations that what might have been contained in that missing testimony was so elemental to his case that its absence in the transcript has unduly and unfairly prejudiced him. Absent such argument, it can only be assumed that the testimony was unimportant and had no bearing upon his conviction of grand larceny. The error, if any, cannot be remedied. To remand this case for a new trial, merely because of the lack of sixty minutes testimony of unproven and questionable significance would be a waste of the Court's time and money. To reverse Petitioner's conviction would not be in the interest of substantial justice.

Very much on point was the case of *Searles vs. Cowdrick, 21 O.C.C.N.S., 378, 35 O.C.C. 224, Aff'd. without OP 91 Ohio St. 371, 110 N.E. 1067 (1912),* in which the defeated party was unable to obtain any transcript of the trial because of the death of the stenographer. In holding that such unfortunate circumstance would not justify a reversal of the verdict, the Court reasoned that the judgment rendered in the Common Pleas Court is presumed "to be regular and valid and must stand unless reversed in some method authorized by law." The duty and burden reducing the trial to a written Bill of Ex-

ceptions must fall upon the party excepting, not the Court reporter. In the *Searles case*, the Court had to dismiss the appeal and rely upon the conviction below because it had no record at all upon which to review the evidence. In the instant case, however, the record is, for all intent and purposes, complete, and may justifiably be relied upon in an appeal of the Petitioner's conviction.

ARGUMENT II

IN A CRIMINAL PROSECUTION FOR GRAND LARCENY, A JURY VERDICT OF GUILTY ABSENT A DECLARATION OF THE VALUE OF THE STOLEN PROPERTY DID NOT DEPRIVE THE PETITIONER OF HIS LIBERTY WITHOUT DUE PROCESS OF LAW WITHIN THE MEANING OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The Petitioner argues that when an indictment charges a defendant with "grand larceny" and the jury finds the defendant guilty of "grand larceny", such verdict deprives the defendant of his liberty without due process of law under the Fourteenth Amendment, unless the jury also ascertains the exact fair market value of the property alleged to have been stolen. The Petitioner relies upon Revised Code § 2945.75, which requires the jury to determine the value of the goods stolen in order to fix the punishment. But the Petitioner has failed to read the statute closely. It states in pertinent part:

> "When an indictment or information charges an offense against property by *larceny* . . . *if* the value thereof determines the degree of the offense or the punishment, the jury, on conviction shall ascertain and declare in their verdict, the value of such property." (emphasis added).

It must be pointed out that in this case, the indictment

charged the Petitioner with "*grand* larceny" (emphasis added), not mere "larceny". The term, 'grand larceny', itself, specifies the degree of the crime and with it the proper punishment. The degree of punishment turns not upon the exact monetary value of the property, but only upon whether the value of the property is less than or greater than Sixty ($60.00) Dollars.

The Petitioner relies upon the case of *State v. Park, 174 Ohio St. 81, 186 N. E. 2d 736,* for its declaration that there is no such crime as "grand larceny" in Ohio and that if the jury fails to return a dollar value for the property stolen, the judgment cannot stand. Yet, a careful reading of *State vs. Park,* discloses no such statement. In fact, what *State vs. Park* did say, at page 83 of the opinion, was:

> "The terms 'grand larceny' and 'petit larceny' are not defined by statute in Ohio but are descriptive of common law offenses and are so generally used by Courts and the public to designate the degrees of the offense of larceny, that a Court will take judicial notice of their meaning."

Therefore, it is not true that there is no such crime as grand larceny in Ohio, only that such crime is not defined by statute in Ohio. Lack of statutory definition is not tantamount to an absence of the crime altogether. It means only that the specific term is so commonly used as to be a proper subject of judicial notice. It must be presumed therefore that the Trial Court realized that an indictment for grand larceny meant that the goods alleged stolen were worth more than Sixty ($60.00) Dollars.

By specifically finding the value of the things illegally obtained to be in excess of sixty ($60.00) dollars, the jury fulfilled their statutory duty. Any further detailed finding of market value at the time and place of taking would be inexact, superfluous, and place an unnecessary and heavy burden on the trial process.

It should be noted that no objection was raised in the Trial Court to the form of the verdict as it was submitted to the jury. It is a general rule of Appellant Review in Ohio that an Appellate Court will not consider an alleged error which the complaining party could have called to the attention of the Trial Court at a time when any such error could be avoided or remedied. As stated in *State v. Niel, 115 App. 366, 20 O. O. (2d) 445, 185 N E (2d) 462 at 465, (1961)* "The Defendant could have asked to have the jury make more specific finding, but instead of doing so acquiesced on the forms of verdict submitted and on the form of verdict returned".

This absence of a request by the Petitioner for a more specific finding is especially relevant when it does not affirmatively appear from the record that such technical mistake prejudicially affected the merits of the case and the substantial rights of one or both parties.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should not be granted.

Respectfully submitted,
LEE C. FALKE,
Prosecuting Attorney of
Montgomery County, Ohio
41 N. Perry St., Suite 308
Dayton, Ohio 45402

By: JAMES A. BROGRAN,
First Assistant
and
NICHOLAS L. GERREN, JR.
Legal Assistant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Brief in Opposition To Petition For Writ Of Certiorari To The Supreme Court Of Ohio, was deposited in the United States mails with sufficient postage affixed, addressed to Mr. William J. Abraham and Mr. Robert E. Cesner, Jr., Attorneys-At-Law, 24 North High Street, Columbus, Ohio 43215, Counsel for Petitioner, on this 21st day of December, 1972.

LEE C. FALKE,
Prosecuting Attorney of
Montgomery County, Ohio

By
JAMES A. BROGAN,
First Assistant
Counsel for Respondent.

Appendix No. 1

(Filed June 25, 1969)

THE STATE OF OHIO, MONTGOMERY COUNTY
THE COURT OF COMMON PLEAS
Terms in the year Nineteen Hundred and Sixty-Nine

MONTGOMERY COUNTY, ss.

THE GRAND JURORS of the County of Montgomery, in the name, and by authority of the State of Ohio, on their oaths do present and find that Lawrence A. Ridgeway, on or about the 29th day of March, in the year one thousand nine hundred and sixty-nine, in the County of Montgomery, aforesaid, and State of Ohio, did steal from William Frambes, property, (2) Turbo Power Lawn Mowers and (2) MTD 4 horse power Rotary Tillers, in an amount and value in excess of Sixty Dollars ($60.00); contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

LEE C. FALKE,
Prosecuting Attorney of
Montgomery County, Ohio

Appendix No. 2

(Filed October 2, 1969)

MONTGOMERY COUNTY COMMON PLEAS COURT

STATE OF OHIO

Case No. 29253

Plaintiff,

Against

LAWRENCE A. RIDGEWAY

Defendant.

VERDICT

We, the Jury, upon the issues joined in this case, do find the defendant, Lawrence A. Ridgeway, (*) guilty of grand larceny.

(*) INSERT IN INK your verdict by writing "guilty" or "not guilty"

1 ORVILLE L. TYSSELING, Foreman
2 IAN L. LEYBOURNE
3 FRANK MORGAN
4 ROBERT C. MOORE
5 RAYMOND SHACKLEFORD
6 CHARLES M. KELLY
7 RICKIE G. ROBERTS
8 LESTER E. HARGIS
9 MARY GURGACZ
10 NORMADEAN MURPHY
11 ALLAN HUFF
12 JOSEPHINE R. ROBINSON

All Jurors concurring in the Verdict

Appendix No. 3

Filed October 2, 1969

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

Case No. 29253

STATE OF OHIO

Plaintiff,

vs.

LAWARENCE A. RIDGEWAY

Defendant.

DECISION AND ENTRY

On motion of defendant filed October 2, 1969 to obtain leave to proceed in forma pauperis:

The motion is overruled.

It must be noted that the motion reports that a notice of appeal has been filed. This court has no jurisdiction to determine the forms of appeal, as indigent or otherwise, in another court.

The defendant was found not to be indigent at the time of trial. The defendant repeatedly protested that he had funds available and could employ counsel if he chose to do so. He again stated on voir dire to the jury that it was his decision to represent himself as a matter of right.

It was also reported to this court by his recently employed counsel that he had been employed and paid by the defendant for this appeal.

LEE FALKE, *Prosecutor*
W. J. ABRAHAM, *Atty. for Defendant*

ROBERT L. MCBRIDE, Judge

Appendix No. 4

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

Case No. 3507

STATE OF OHIO,
Plaintiff-Appellee,

vs.

LAWRENCE A. RIDGEWAY,
Defendant-Appellant.

ENTRY

This cause came on to be heard upon an appeal from an order of The Common Pleas Court of Montgomery County, entered on the 8th day of October, 1969, wherein the Court held that it had no jurisdiction to consider and grant a motion of defendant in a criminal case to permit him to proceed as an indigent due to the fact that he is unable to prepay the costs for preparing a bill of exceptions after the defendant had filed his notice of appeal to the Court of Appeals.

Upon consideration of Appellant's assignment of error, brief and argument of Counsel, it is the opinion of the Court that the order of the Common Pleas Court should be reversed.

It is therefore, hereby ordered that the judgment of the Montgomery County Common Pleas Court be reversed and this matter remanded for further proceedings in accordance with law.

Kerns, P. J.
Crawford, J.
Sherer, J.

APPROVED:
William J. Abraham
Attorney for Defendant-Appellant,
Lee C. Falke, Prosecuting Attorney
James A. Brogan, Assistant
Attorneys for Plaintiff-Appellee.

Appendix No. 5

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO.

Case No. 3507

STATE OF OHIO,
Plaintiff-Appellee,

vs.

LAWRENCE A. RIDGEWAY,
Defendant-Appellant.

OPINION

Rendered on the 24th day of February, 1972.

LEE C. FALKE, Prosecuting Attorney, 41 North Perry Street, Dayton, Ohio 45402, by: James A. Brogan, Assistant Prosecuting Attorney and Kathryn G. Havermann, Legal Assistant
Attorneys for Plaintiff-Appellee

WILLIAM J. ABRAHAM and ROBERT E. CESNER, JR., 16 East Broad Street, Columbus, Ohio 43215
Attorneys for Defendant-Appellant

CRAWFORD, J.:

Defendant was convicted and sentenced on September 5, 1969 upon an indictment which, as amended, charged that he "did steal from Dixie Enterprises, Incorporated property, (2) Turbo Power Lawn Mowers and (2) MTD 4 horse power Rotary Tillers, in an amount and value in excess of Sixty Dollars ($60.00); etc."

According to the State's evidence, defendant had contrived with a stockboy and a cashier of Goldman's

Store No. 7 in Huber Heights, to obtain, without paying or being charged therefor, certain merchandise, including that described in the indictment, which he hauled away in a truck and kept or concealed.

Although not indigent, he chose to represent himself at the trial. Counsel employed by him now prosecute this appeal.

His first assignment of error is that "Where a jury returns a verdict of 'guilty of grand larceny' and no value of the property stolen is declared, such verdict will not form the predicate for a judgment."

The verdict reads:

> "We, the Jury, upon the issues joined in this case, do find the defendant, Lawrence A. Ridgeway, guilty of grand larceny."

This verdict is partly typed upon a printed form, with a blank space in which the word "guilty" is written by the jury in pen and ink.

Sec. 2945.75 R.C. provides that in the trial of a charge of larceny, if the value of the property stolen determines the degree of the offense or the punishment, the jury, on conviction, shall ascertain and declare in their verdict the value of such property.

Although the term "Grand Larceny" is not found in the statutes, the court in his charge defined the term as generally understood, explaining that it means the larceny of property of such value as to constitute a felony, which in this state is in excess of $60.00. The evidence clearly shows the value of the property stolen in this case to have exceeded that amount.

No objection was made either to the form of the verdict or to the instructions of the court.

The verdict in this form is technically incorrect, and its use is not approved. However, the defendant-appellant has not shown that he was in anywise prejudiced by this irregularity. His complaint is effectively answered by the Supreme Court in the case of *State vs. Park*, 174 Ohio St. 81, 186 N. E. (2d) 736 (1962).

The only perceptible distinction between that case and the present is of no significance: There the defendant's counsel admitted that the property allegedly stolen was of the value of Three Hundred Dollars ($300.00); here, although there is no such admission, the evidence is quite clear that the value was substantially in excess of Sixty Dollars ($60.00).

This assignment discloses no prejudicial error.

The second assignment is that the transcript or bill of exceptions is incomplete. Present counsel filed objections to the bill of exceptions as presented to the court, on the basis that it was incomplete for lack of a certain portion of the trial, during which a special temporary reporter was taking the record. In making the objection, defendant's counsel stated:

> "The likelihood (sic) of a prejudice to defendant's right of review on appeal is particularly clear in this case where, defendant represented himself during the trial and counsel has no means of determining what transpired during that portion of the trial which does not appear in the bill of exceptions. The defendant and his counsel in this case has done everything required by law to obtain a complete bill of exceptions, and defendant should not suffer detriment because of the failure of the court reporter to provide a portion of the transcript."

The objections were overruled in an entry which recited that a portion of the testimony was taken on a

single day after 4:00 o'clock P.M. by a special reporter, who, through illness, etc. has since been unavailable.

The entry also stated: "In view of the self representation no efforts have been made to supply a narrative report of the missing testimony.

"The trial court has no alternative other than to deliver the record as it exists with all of the testimony except that portion taken after 4:00 P.M. on the single day in question."

We agree that the trial court could not properly have taken any other course.

The burden of preparing such record as will portray his claimed errors is always upon the appellant. A narrative bill of exceptions when necessary to this end is permissible. 3 Ohio Juris. (2d) 344, Appellate Review, Section 432. There is no reason why such a method could not be used to supplement this transcript or bill of exceptions. It is no excuse that defendant was without counsel. This was by his own choice. He did not claim to be indigent nor request the appointment of counsel. If he cannot recall the substance of what was omitted, its importance to his defense would appear to be questionable, and he is not in a position to claim prejudice by its omission.

A trial in which one side proceeds without counsel always presents great difficulties to the court and to opposing counsel. In this case the trial court exhibited commendable patience, and he and opposing counsel showed all proper consideration for defendant's rights in an exhaustive trial which generated a record which already runs to 556 pages.

The third assignment is that the verdict is contrary to the manifest weight of the evidence. Although it is desirable that there be a complete transcript or bill of

exceptions for the consideration of such an assignment, the nature of the argument here presented is such as to reduce the importance of an absolutely complete record. The evidence presented leaves no doubt that defendant did wrongfully steal and carry away the property alleged in the indictment.

The argument under this assignment is that inasmuch as he operated with the connivance of persons in the employ of the Goldman store, from which the property was taken, he should be charged only, if at all, with being an aider and abettor to an embezzler or embezzlers.

The fact that he might conceivably be so charged does not relieve him of guilt of grand larceny. The larceny was shown to have been committed by him, regardless of the culpable conduct of others.

No error prejudicial to the defendant appearing in the record, the judgment will be affirmed.

SHERER, P. J. and KERNS, J. concur.

Appendix No. 6

THE SUPREME COURT OF THE STATE OF OHIO

No. 72-306

THE STATE OF OHIO,

City of Columbus.

State of Ohio,

Appellee,

vs.

LAWRENCE A. RIDGEWAY,

Appellant.

1972 TERM

To wit: June 9, 1972

MOTION FOR LEAVE TO APPEAL FROM THE COURT OF APPEALS

for MONTGOMERY *County*

It is ordered by the Court that this motion is overruled.

COSTS:

Motion Fee, $20.00, paid by William J. Abraham.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this_____day of_____19____

_____Clerk

_____Deputy

Appendix No. 7

THE SUPREME COURT OF THE STATE OF OHIO

No. 72-306

THE STATE OF OHIO,

City of Columbus.

State of Ohio,

Appellee,

vs.

LAWRENCE A. RIDGEWAY,

Appellant.

1972 TERM

To wit: June 29, 1972

REHEARING

It is ordered by the court that rehearing in this case is denied.

I, THOMAS L. STARTZMAN, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry was correctly copied from the records of said Court, to wit, from Journal No._____Page_____

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Supreme Court this 29th day of June, 1972.

THOMAS L. STARTZMAN, *Clerk.*

By_____Deputy.